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EXAMINER	
STARKS, WILBERT L	

ART UNIT	PAPER NUMBER
2129	

NOTIFICATION DATE	DELIVERY MODE
01/15/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/430,767

Applicant(s)

HECKERMAN ET AL.

Examiner

Wilbert L. Starks, Jr.

Art Unit

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36,38 and 41-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36,38 and 41-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Prosecution Reopened

1. In view of the Appeal Brief filed on 12 SEP 2007, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

 11/7/08
DAVID VINCENT
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

Claim Rejections - 35 U.S.C. §101

1. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the invention as disclosed in claims 1-36, 38, and 41-75 is directed to non-statutory subject matter.

2. None of them is limited to practical applications. Examiner finds that *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994) controls the 35 U.S.C. §101 issues on that point for reasons made clear by the Federal Circuit in *AT&T Corp. v. Excel Communications, Inc.*, 50 USPQ2d 1447 (Fed. Cir. 1999). Specifically, the Federal Circuit held that the act of:

...[T]aking several abstract ideas and manipulating them together adds nothing to the basic equation. *AT&T v. Excel* at 1453 quoting *In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994).

Examiner finds that Applicant's "ads" references are just such abstract ideas.

3. Examiner bases his position upon guidance provided by the Federal Circuit in *In re Warmerdam*, as interpreted by *AT&T v. Excel*. This set of precedents is within the same line of cases as the *Alappat-State Street Bank* decisions and is in complete

agreement with those decisions. *Warmerdam* is consistent with *State Street*'s holding that:

Today we hold that *the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price*, constitutes a practical application of a mathematical algorithm, formula, or calculation because it produces 'a useful, concrete and tangible result' -- *a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades*. (emphasis added) *State Street Bank* at 1601.

4. True enough, that case later eliminated the "business method exception" in order to show that business methods were not per se nonstatutory, but the court clearly *did not* go so far as to make business methods *per se* statutory. A plain reading of the excerpt above shows that the Court was *very specific* in its definition of the new *practical application*. It would have been much easier for the court to say that "business methods were per se statutory" than it was to define the practical application in the case as "...the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price..."

5. The court was being very specific.

6. Additionally, the court was also careful to specify that the "useful, concrete and tangible result" it found was "a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades." (i.e. the trading activity is the further practical use of the real world

monetary data beyond the transformation in the computer – i.e., “post-processing activity”.)

7. Applicant cites no such specific results to define a useful, concrete and tangible result. Neither does Applicant specify the associated practical application with the kind of specificity the Federal Circuit used.

8. Furthermore, in the case *In re Warmerdam*, the Federal Circuit held that:

...the dispositive issue for assessing compliance with Section 101 in this case is whether the claim is for a process that goes beyond simply manipulating ‘abstract ideas’ or ‘natural phenomena’ ... As the Supreme Court has made clear, ‘[a]n idea of itself is not patentable, ... taking several abstract ideas and manipulating them together adds nothing to the basic equation.’ *In re Warmerdam* 31 USPQ2d at 1759 (emphasis added).

9. Since the Federal Circuit held in *Warmerdam* that this is the “dispositive issue” when it judged the usefulness, concreteness, and tangibility of the claim limitations in that case, Examiner in the present case views this holding as the dispositive issue for determining whether a claim is “useful, concrete, and tangible” in similar cases.

Accordingly, the Examiner finds that Applicant manipulated a set of abstract “items” to solve purely algorithmic problems in the abstract (i.e., what *kind* of “ad” is used?

Philosophical ideas? Even vague expressions, about which even reasonable persons could differ as to their meaning? Combinations thereof?)

10. Since *Warmerdam* is within the *Alappat-State Street Bank* line of cases, it takes the same view of “useful, concrete, and tangible” the Federal Circuit applied in *State Street Bank*. Therefore, under *State Street Bank*, this could not be a “useful, concrete and tangible result”. There is only manipulation of abstract ideas.

11. The Federal Circuit validated the use of *Warmerdam* in its more recent *AT&T Corp. v. Excel Communications, Inc.* decision. The Court reminded us that:

Finally, the decision in *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994) is not to the contrary. *** The court found that the claimed process did nothing more than manipulate basic mathematical constructs and concluded that ‘taking several abstract ideas and manipulating them together adds nothing to the basic equation’; hence, the court held that the claims were properly rejected under §101 ... Whether one agrees with the court’s conclusion on the facts, the holding of the case is a straightforward application of the basic principle that mere laws of nature, natural phenomena, and abstract ideas are not within the categories of inventions or discoveries that may be patented under §101. (emphasis added) *AT&T Corp. v. Excel Communications, Inc.*, 50 USPQ2d 1447, 1453 (Fed. Cir. 1999).

12. Remember that in *In re Warmerdam*, the Court said that this was the dispositive issue to be considered. In the *AT&T* decision cited above, the Court reaffirms that this is the issue for assessing the “useful, concrete, and tangible” nature of a set of claims under 101 doctrine. Accordingly, Examiner views the *Warmerdam* holding as the dispositive issue in this analogous case.

13. The fact that the invention is merely the manipulation of *abstract ideas* is clear. The data referred to by Applicant’s word “ads” is simply an abstract construct that does not provide limitations in the claims to the transformation of real world data (such as monetary data or heart rhythm data) by some disclosed process. Consequently, the

necessary conclusion under *AT&T*, *State Street* and *Warmerdam*, is straightforward and clear. The claims take several abstract ideas (i.e., "ads" in the abstract) and manipulate them together adding nothing to the basic equation. Claims 1-36, 38, and 41-76 are, thereby, rejected under 35 U.S.C. §101.

Claim Rejections - 35 U.S.C. §112

The following is a quotation of the first paragraph of 35 U.S.C. §112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-36, 38, and 41-76 are rejected under 35 U.S.C. §112, first paragraph because current case law (and accordingly, the MPEP) require such a rejection if a §101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a matter of law there is no way Applicant could have disclosed *how* to practice the *undisclosed* practical application. This is how the MPEP puts it:

("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. §101 that the specification disclose as a matter of fact a practical utility for the invention.... If the application fails as a matter of fact to satisfy 35 U.S.C. §101, then the application **also fails as a matter of**

law to enable one of ordinary skill in the art to use the invention under 35 U.S.C. §112."); In re Kirk, 376 F.2d 936, 942, 153 USPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with §112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless invention.**") See, MPEP 2107.01(IV), quoting In re Kirk (emphasis added).

Therefore, claims 1-36, 38, and 41-76 are rejected on this basis.

Claim Rejections - 35 U.S.C. §102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 are rejected under 35 U.S.C. §102(e) as being anticipated by Ballard (U.S. Patent Number 6,182,050 B1; dated 30 JAN 2001; class 705; subclass 014.)

Specifically:

Claim 1

Claim 1's "allocating each of a plurality of ads to at least one of a plurality of clusters, based on a predetermined criterion accounting for at least a quota for each ad and a constraint for each cluster;" is anticipated by Ballard, col. 2, lines 11-22, where it recites:

According to one aspect of the invention, **associated with each advertisement is target criteria information** (e.g., desired **demographic information**, a desired affinity ranking, or a target criteria filter). Such information is determined by the advertiser. In addition, there is playback criteria associated with each advertisement. Playback criteria

determines the range of dates or times during which the advertisement may be shown, and any limitation on the number of times the advertisement may be shown. The playback criteria is determined by the advertiser service provider. The target criteria information and playback information is **stored on an advertising service provider computer**.

The "allocating" is anticipated by "associated with" of the prior art.

The "clusters" are anticipated by things that are clustered using the "demographic information" of the prior art. That is, ads may be clustered and people may be clustered on the basis of the "demographic information."

The "predetermined criterion" is anticipated by the "demographic information" of the prior art.

Further, claim 1's "... accounting for at least a **quota**..." is anticipated by Ballard, col. 10, lines 46-67, where it recites:

For absolute reverse demographic selection, the advertiser specifies the desired demographics of consumers. The message content manager at the user computer sends a message request which specifies consumer demographics. The ASP computer determines which advertisements having target criteria demographics into which the consumer's demographics fit. One or more advertisements that conform to the request are sent to the end user. It is likely that many advertisements in the advertising service provider's data base may encompass the consumer's demographics. The ASP computer 52 uses a business model to determine which advertisements to send. For example, advertiser may pay to have their ad distributed to a **requisite number** of end users within a specific period of time. The ASP computer 52 manages the distribution to conform to the advertising contracts, while also screening using the selection method described above. The specific advertisement selected of the many that fit the selection criteria thus may be based upon a time slot, a number of end users to receive the advertisement or another method of pricing on-line or direct mail advertisement distribution.

Claim 1's "selecting an ad for a current cluster from ads allocated to the current cluster; and," is anticipated by Ballard, col. 2, lines 34-64, where it recites:

In a highest security embodiment, the target criteria information is a target criteria filter. The end user computer receives the target criteria filter for all or a subset of potential advertisements. According to one aspect of the invention, the target criteria filter is executable code. The end user computer executes each of the target criteria filters to **determine which advertisements are to be displayed on the end user computer**. Each target criteria filter generates a normalized output which allows the results of each filter to be ranked. Such rankings are used to determine which advertisements are to be displayed. Each target criteria filter requests input data from the end user computer. Such input data corresponds to all or a portion of the end user information (e.g., demographic data, affinity ranking data, or other data statically or dynamically derived from the end user computer). According to an alternative aspect, the target criteria filter is a set of parameters for a generic filter stored on the end user computer. Thus, executable code need not be downloaded to implement the filter. There may be one or more **generic filters used for a select one or more advertisements**. An advantage of the target criteria filter embodiments is that the processing of the end user information occurs on the end user computer. Such information need not be downloaded to the advertising service provider. The end user computer determines which advertisements are to be displayed. The end user computer sends a message to receive the advertisement. In one embodiment, the advertising service provider computer receives the message and downloads the advertising copy to the end user. In another embodiment, the advertisement is accessed as a web page. The end user computer displays the web page of select advertisements.

The claimed "selecting an ad" is anticipated by "determine which advertisements" of the prior art.

The claimed "current cluster" is anticipated by the "end user" computers of the prior art.

Claim 1's "effecting the ad." is anticipated by Ballard, col. 2, lines 34-64, where it recites:

In a highest security embodiment, the target criteria information is a target criteria filter. The end user computer receives the target criteria filter for all or a subset of potential advertisements. According to one aspect of the invention, the target criteria filter is executable code. The end user computer executes each of the target criteria filters to determine which advertisements are to be displayed on the end user computer. Each target criteria filter generates a normalized output which allows the results of each filter to be ranked. Such rankings are used to determine which advertisements are to be displayed. Each target criteria filter requests input data from the end user computer. Such input data corresponds to all or a portion of the end user information (e.g., demographic data, affinity ranking data, or other data statically or dynamically derived from the end user computer). According to an alternative aspect, the target criteria filter is a set of parameters for a generic filter stored on the end user computer. Thus, executable code need not be downloaded to implement the filter. There may be one or more generic filters used for a select one or more advertisements. An advantage of the target criteria filter embodiments is that the processing of the end user information occurs on the end user computer. Such information need not be downloaded to the advertising service provider. The end user computer determines which advertisements are to be displayed. The end user computer sends a message to receive the advertisement. In one embodiment, the advertising service provider computer receives the message and downloads the advertising copy to the end user. In another embodiment, the advertisement is accessed as a web page. The end user computer displays the web page of select advertisements.

Claim 2

Claim 2's "... effecting the item comprises displaying the ad." is anticipated by

Ballard, col. 10, lines 1-10, where it recites:

Once the ASP computer 52 makes the selections, the advertisements or identifications (e.g., web page address) of the selected advertisements are sent to the end user computer along with the playback criteria. The end user computer 14 stores the advertisements or identifications and the playback criteria. A playback manager program determines when to display an advertisement on the end user computer. For example, ads may be displayed while the end user is off-line and the computer is idle, or while the computer is loading a program.

Response to Arguments

Applicant's arguments filed 10/15/2007 have been fully considered but they are not persuasive. Specifically:

Argument 1

Claims 1, 2, 4-36, 38, and 41-76 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is improper because the subject claims recite statutory subject matter as defined by 35 U.S.C. § 101 and, further, the subject claims relate to practical applications.

Applicant's first argument is a conclusory statement.

There are no analyses, nor are there any facts to support the statement.

Therefore, by itself, it is insufficient to shift Applicant's burden on the issue.

The rejections, therefore, stand.

Argument 2

The subject application relates to cluster-based and rule based approaches for targeted **advertising** with **quotas**. Ads, such as banner ads, house ads, and targeted advertising are used to advertise or **bring awareness of items, services, events and so on** to the **consuming public**. (See e.g., pg. 1, Ins. 11-15; pg. 2, Ins. 4-6; pg. 11, Ins. 5-14; and pg. 17, Ins. 5-9). In the Final Office Action, it was stated "Examiner is not of the opinion that a pure 'advertisement' is not 'useful, concrete and tangible' ... and is not a 'substance'." Based on a dictionary definition of "advertisement" it is asserted that:

"A mere 'notice' is not tangible. It is not a 'substance' and it need not involve any commerce. It is mere data display. As such, it is abstract and pure manipulations of 'ads' are likewise, abstract ideas."

However, the purpose or usefulness of an ad is to draw the public's attention to the item being advertised and such advertisements are more than "mere data display".

For the sake of accuracy:

- 1) Applicant's reference in his argument to "the consuming public" is not in the Specification, nor is it in the claims;
- 2) Applicant's claims are not in "means-plus-function" format, nor are they in "step-for" format, so the limitations of the Specification cited by Applicant cannot be "read into" the claims;
- 3) neither the Claims nor the Specification require "advertisements" to be paid advertisements nor advertisements for the actual sale of goods or services...therefore State Street Bank is not properly analogous to this case (the claimed "advertisements" are merely scheduled data display);
- 4) Applicant's "quotas" do not necessarily refer to concrete or tangible things (see Applicant's Specification, page 11, lines 20-23.)

Now, Applicant asserts in this argument that:

However, the purpose or usefulness of an ad is to draw the public's attention to the item being advertised and such advertisements are more than "mere data display".

First, the cited "draw the public's attention" is not claimed.

Second, mere attention-getting data is abstract. It does not say what kind of data...whether it is color values, or the word "FREE" or merely punctuation such as exclamation points.

Punctuation is not concrete or tangible.

Applicant did not require the advertisements to be paid for and did not require the advertised items to be on sale.

The claimed "advertisements" are merely scheduled data display.

Applicant's argument is unpersuasive.

The rejections stand.

Argument 3

The decision whether to act on the ad (e.g., involve commerce) is entirely left to the consuming public. Each individual can become aware of the item being advertised by the advertisement, which is tangible, useful and concrete (e.g., perceived and drawing consuming public's attention to something).

If an ad is for actual commerce, someone is advertising in order to sell something. The commercial intent must be there. Applicant's argument is evidence that Applicant does not intend to limit the practical applications to commercial applications that invoke State Street. Applicant seeks to keep nonstatutory applications within the scope of the claims.

Applicant's argument is unpersuasive.

The rejections stand.

Argument 4

Even if "ads", assuming arguendo, are abstract ideas, the subject claims go beyond mere manipulation of abstract items and a person of ordinary skill in the relevant art would appreciate the usefulness and practical application of the subject claims. Specific and substantial utilities of the subject claims relate to maximizing a click through rate for ads given a quota, allowing web site operators to maximize earning potential from advertising, adhering to various obligations relating to advertising within certain clusters (e.g., adult-oriented ad might not be desired to be shown in a children-oriented cluster), as well as other utilities. (See e.g., pg. 3, ln. 13 to pg. 4, ln. 4). In addition, some advertisers can be favored over other advertisers for various reasons. (See e.g., pg. 16, lns. 18-20). The ad can be effected, which can include displaying the ad or displaying a button on a web site for immediate purchase of an item. (See e.g., pg. 11, ln. 18 to pg. 12, ln. 3 and pg. 28, lns. 10-14). Effecting the ad can also relate to maximizing a possibility that a user (e.g., consumer) will purchase something, "not just click on the ad." (See e.g., pg. 18, lns. 16-17). Thus, the subject claims relate to practical applications and produce a useful, tangible and concrete result for both an advertiser and a web site operator in order to maximize earning potentials from advertising. (See e.g., pg. 3, lns. 17-19).

Therefore, based on the above, the subject claims recite a practical application, go beyond mere manipulation of abstract ideas and produce a concrete, tangible and useful result. Therefore, it is requested that this rejection be withdrawn and the subject claims allowed.

Applicant lists practical applications that are not claimed.

Further, Applicant lists "other utilities" without specifying them.

Applicant's argument is unpersuasive.

The rejections stand.

Argument 5

B. Rejection of Claims 1, 2, 4-36, 38, and 41-76 Under 35 U.S.C. §112

Claims 1, 2, 4-36, 38, and 41-76 stand rejected under 35 U.S.C. §112, first paragraph because current case law and the MPEP require such a rejection if a § 101 rejection is given. This rejection should be withdrawn for at least the following reasons because, as discussed above, the subject claims disclose a practical application that produces a concrete,

tangible and useful result and go beyond manipulation of abstract ideas. As such, the subject claims recite statutory subject matter as defined by 35 U.S.C. § 101. Therefore, this rejection should be withdrawn.

Applicant has not overcome the utility rejections. Therefore, the following applies:

("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. §101 that the specification disclose as a matter of fact a practical utility for the invention.... If the application fails as a matter of fact to satisfy 35 U.S.C. §101, then the application also fails as a matter of law to enable one of ordinary skill in the art to use the invention under 35 U.S.C. §112."; In re Kirk, 376 F.2d 936, 942, 153 USPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with §112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless invention.**") See, MPEP 2107.01(IV), quoting In re Kirk (emphasis added).

Examiner made a §101 utility rejection of the claims because they fail to indicate a specific practical utility (i.e., practical application) for the claimed invention. Therefore, Applicant's argument is unpersuasive.

The rejections stand.

Argument 6

Independent claim 1, recites a computer-implemented method comprising **allocating each of a plurality of ads to at least one of a plurality of clusters**, based on a predetermined criterion **accounting for at least a quota for each ad and a constraint for each cluster**, selecting an ad for a current cluster from ads allocated to the current cluster and effecting the ad. For example, the quota for each ad and the constraint for each cluster can be used to maximize a number of click through for all the ads, given the quotas and constraints. (See e.g., pg. 15, Ins. 8-11). Ballard does not expressly nor inherently describe such novel features.

Instead, Ballard relates to advertisement distribution based on demographic data. (See e.g., col. 9, Ins. 39-48). These demographics are characteristics of human populations and population segments and can include hobbies, interest, credit history, travel history and past purchasing history. (See e.g., col. 1, Ins. 21-33 and col. 7, Ins. 313).

However, Ballard fails to teach or even suggest accounting for at least a quota for each ad and a constraint for each cluster, as claimed.

Since Ballard does not expressly or inherently describe all limitations recited in the subject claims this rejection should be withdrawn and the subject claims allowed.

First, Applicant's statement that the prior art does not contain: "a computer-implemented method comprising allocating each of a plurality of ads to at least one of a plurality of clusters..." is inaccurate. It is anticipated by Ballard, col. 9, lines 39-48, where it recites:

For advertisement distribution based on demographic data, the message content manager sends a request to the ASP computer to send an advertisement which conforms to a included set of demographic parameters. Such information is sent to the ASP computer 52. The ASP computer 52 then selects one or more advertisements that conform to the demographic data and sends the advertisements to the end user via modem, fax and messenger service (e.g., postal service). In another embodiment both affinity data and demographic data are sent.

The "user" of the prior art anticipates the claimed "at least one of a plurality of clusters" because the distribution to the "user" was based on "demographic data"...i.e., cluster data.

Second, Applicant's statement that the prior art does not contain: "based on a predetermined criterion accounting for at least a quota for each ad and a constraint for each cluster" is likewise not accurate. It is anticipated by Ballard, col. 10, lines 47-67, where it recites:

For absolute reverse demographic selection, the advertiser specifies the desired demographics of consumers. The message content manager at the user computer sends a message request which specifies consumer demographics. The ASP computer determines which advertisements having target criteria demographics into which the consumer's demographics fit. One or more advertisements that conform to the request are sent to the end user. It is likely that many advertisements in the advertising service provider's data base may encompass the consumer's demographics. The ASP computer 52 uses a business model to determine which advertisements to send. For example, advertiser may pay to have their ad distributed to a requisite number of end users within a specific period of time. The ASP computer 52 manages the distribution to conform to the advertising contracts, while also screening using the selection method described above. The specific advertisement selected of the many that fit the selection criteria thus may be based upon a time slot, a number of end users to receive the advertisement or another method of pricing on-line or direct mail advertisement distribution.

The prior art's "requisite number" anticipates the claimed "quota" and the "target criteria demographics" anticipates a "constraint" for each cluster (i.e., demographic group.)

Therefore, Applicant's argument is unpersuasive.

The rejections stand.

Argument 7

D. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1, 2, 4-36, 38 and 41-75 be reversed.

Applicant's arguments are unpersuasive.

The rejections stand.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

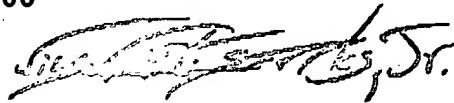
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Wilbert L. Starks, Jr. whose telephone number is (571) 272-3691.

Alternatively, inquiries may be directed to the following:

S. P. E. David Vincent (571) 272-3080

Official (FAX) (571) 273-8300



Wilbert L. Starks, Jr.
Primary Examiner
Art Unit 2129

WLS

04 JAN 2008